



# Department of Justice

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## **NEW YORK FOOD COMPANY AND ITS TOP EXECUTIVES PLEAD GUILTY TO RIGGING BIDS ON NYC BOARD OF EDUCATION CONTRACTS**

### **DOJ to Seek Millions of Dollars in Restitution for NYC Board of Education**

WASHINGTON, D.C. -- A Long Island, New York food distribution company and its president and vice president have pleaded guilty to rigging bids on millions of dollars of produce contracts awarded by the New York City Board of Education (NYCBOE), the Department of Justice announced.

Including today's filing, the Department's investigation of bid rigging, bribery, fraud, and tax-related offenses in the food distribution industry has resulted in the Antitrust Division's New York Field Office charging 28 individuals and 14 food companies with rigging bids for the supply and delivery of food to various public and private customers in the New York metropolitan area.

Vincent DiCarlo of East Islip, New York, the president and a co-owner of DiCarlo Distributors Inc. of Holtsville, New York, pleaded guilty today in U.S. District Court in Manhattan to participating in a scheme to rig bids to supply produce to the NYCBOE. On May 31, 2000, DiCarlo Distributors Inc. and its vice-president and co-owner, John DiCarlo, of Shoreham, New York, were indicted for participating in the same bid-rigging conspiracy. On February 27, 2001, DiCarlo Distributors Inc. and John DiCarlo waived their right to a trial and pleaded guilty to the bid rigging conspiracy.

According to the charges, the conspirators carved up bids to supply and deliver more than \$87 million of produce to the NYCBOE between the early 1990s and April 1999. Vincent DiCarlo, John DiCarlo, and DiCarlo Distributors Inc. joined the conspiracy in 1997.

"The conspirators in these and related cases succeeded in eliminating almost all meaningful competition for produce contracts awarded by the Board of Education of the City of New York," said John M. Nannes, Acting Assistant Attorney General in charge of the Department's Antitrust Division. "In addition to the imposition of criminal penalties, including incarceration and heavy fines, the Antitrust Division will seek to have the defendants pay restitution to the victims of their crime."

The conspirators carried out the scheme by agreeing on the school zones that each participating company would win and lose, and also agreeing on the prices or price levels they would bid. The winning bidders paid hundreds of thousands of dollars into a fund that was used to pay competitors not to bid competitively. Vincent and John DiCarlo and DiCarlo Distributors Inc. were among the conspirators that paid a total of more than \$100,000 to one conspirator in 1998 in exchange for that conspirator's agreement to let DiCarlo Distributors Inc. be the winning bidder to supply produce to the schools in Manhattan for one six-month period.

Other conspirators who have previously pleaded guilty to participating in the produce conspiracy are Landmark Food Corp. of Holtsville, New York; Nick Penachio Co. Inc. of the Bronx, New York; Baiardi Chain Food Corp. of South Hackensack, New Jersey; Kanowitz Fruit & Produce Inc. of Brooklyn, New York; Clifton Fruit & Produce Inc. of Brooklyn, New York; Gordon Kerner; Nicholas A. Penachio; David Axelrod; Harry Levy; Steven Kanowitz; John Doody; Toby Unger; and Michael Beberman.

The NYCBOE operates New York City's public school system, the largest in the United States. It services a student population of nearly 1.1 million, and serves approximately 640,000 lunches and 150,000 breakfasts every day. The NYCBOE purchases more food than any other single customer in the U.S., other than the Department of Defense. It receives the bulk of its funding from the federal, state, and city governments. Most of the meals it serves are subsidized by the United States Department of Agriculture under the National School Lunch Act of 1946.

In addition to public schools, numerous private and parochial schools receive food under the NYCBOE's contracts through programs that provide free or reduced-price meals to needy students. More than 80 percent of the students fed by the NYCBOE receive free meals. Another 10 percent receive reduced-price meals.

The maximum sentence for Vincent DiCarlo and John DiCarlo for their violation of the Sherman Act, 15 U.S.C. § 1 is three years imprisonment and a \$350,000 fine. The maximum fine for DiCarlo Distributors Inc. is \$10 million. All of the maximum fines may be increased to twice the gain derived from the crime or twice the loss suffered by the victim of the crime, if either of those amounts is greater than the statutory maximum fine.

In addition, each of the defendants could be ordered to pay restitution to the NYCBOE and any other victim for the full amount of the victim's loss. The charges allege that, at times,

certain co-conspirators raised their prices to the NYCBOE by more than 10 percent as a result of the conspiracy.

The ongoing investigation is being conducted by the Antitrust Division, the Federal Bureau of Investigation, and the Internal Revenue Service Criminal Investigation.

Anyone with information concerning bid rigging, bribery, tax offenses, or fraud in the food distribution industry or concerning bid rigging on any government contract should contact the New York Field Office of the Antitrust Division at (212) 264-0679 or the New York Division of the FBI at (212) 384-3252.

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